

FINAL MINUTES

Board of Agriculture and Consumer Services Oliver Hill, Sr. Building, 102 Governor St., Richmond, Virginia December 3, 2009

The meeting convened at 9:00 a.m. on Thursday, December 3, 2009, in Room 220 of the Oliver W. Hill Building, 102 Governor Street in Richmond, Virginia. President Rogers led the Board members in prayer and then called the meeting to order. The Board Secretary called the roll:

PRESENT

Stephen Ellis
Steve Sturgis
Paul W. Rogers, Jr.
William B. Bain
Andrea Lohr
Edward S. Fleming
Patrick A. Toulme
Charles C. Clark, Jr.
John D. Hardesty, Jr.

DISTRICT

1st
2nd
3rd
4th
6th
7th
8th
9th
10th

Dr. Wondi Mersie

Representing President of Virginia
State University

Dr. Alan L. Grant

Representing President of Virginia Tech

ABSENT

Melvin Murphy

11th

STAFF PRESENT

Todd P. Haymore, Commissioner
Donald G. Blankenship, Deputy Commissioner
Roy E. Seward, Board Secretary

APPROVAL OF MINUTES

The minutes of the August 4, 2009, meeting were approved as distributed.

REPORT FROM BOARD MEMBERS

Dr. Alan Grant, the new Dean of the College of Agriculture and Life Sciences, represented Dr. Charles W. Steger, President of Virginia Tech. Dr. Grant reported that the University's student numbers are up and that the research program is thriving. He noted that budget reductions are hitting everyone hard. He mentioned that his university is looking forward to partnering with VSU and state and local government. Regarding leadership changes, he reported that Dr. Craig Nessler, former Virginia Agricultural Experiment Station Director, resigned and that Dr. Saied Mostaghimi, who will also serve as the Associate Dean of Research and Graduate Studies, has filled Dr. Nessler's old job. He added that Extension is recruiting an Associate Director of Extension to serve as director of agricultural and natural resources programs. He

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reported that Jim Riddell, who served as an alternate for Dr. Steger at Board meetings, retired from Virginia Tech in the fall.

Dr. Wondie Mersie, who represented Virginia State President Eddie N. Moore, Jr., welcomed Dr. Grant to the Board and stated that he is looking forward to working with him. He reported on the success of VSU's Crop Field Day held on August 25, and the Aquaculture Field Day held on October 25 at VSU. He also mentioned that President Moore will be retiring on June 30, 2010, and that the VSU Board of Visitors announced the selection of Dr. Keith T. Miller as the 13th President of VSU starting July 1, 2010. He added that Dr. Miller is currently the President of Lock Haven University in Pennsylvania.

Mr. Fleming thanked Mr. Ellis for his hospitality during the Board's summer meeting and tour. He reported that the corn crop was very good and that the soybean crop was doing very good, but that the recent rains have stopped harvesting efforts. He noted that he has gotten great feedback on the local farmers market. He added that localities are participating in the Farm-to-School program and that citizens still have concerns regarding dog pounds in his area.

Mr. Bain also thanked Mr. Ellis for hosting the summer meeting and tour. He noted that his area has been through so much dry weather for the last three years but that farmers are generally happy with their harvest this year. He mentioned that the wheat crop in some areas had a lot of disease and yields were way down. He noted that the corn crop was very good and that farmers have had a good tobacco and peanut harvest, but that a lot of the soybean and cotton crops was still in the fields.

Mr. Sturgis reported that crops have been severely damaged by the tremendous rainfall in the past several weeks. He noted that a significant portion of some crops is still in the fields waiting to be harvested and that yields and quality have been reduced because of unfavorable weather conditions. He mentioned that the Board's invitation to the State Water Control Board (SWCB) to visit the Eastern Shore to see plasticulture operations was declined. He noted that he made a presentation to the SWCB members and they were receptive to the information. He added that he hopes a memorandum of understanding concerning plasticulture on the Eastern Shore can be signed between the tomato growers and the Department of Environmental Quality and presented to the SWCB at its December 14th meeting in Richmond.

Ms. Lohr reported that her area has had a lot of rain which has caused flooding and has delayed farm activities. She noted that the harvest of the soybean and corn crops has not been completed because of the wet weather. She advised that Pilgrim's Pride is being acquired by a Brazilian company. She added she has not heard much about the company but there is concern in her area that this change in ownership could have a significant impact on the poultry industry in the Valley. She reported that she has received several phone calls about accidents caused by the excessive deer population.

Mr. Clark reported that his district has been wet and that this has been great for grass production. He noted that cattle prices are being affected by dairy prices and that the dairy industry is having a problem with unfavorable feed and milk prices.

Mr. Toulme reported that the consumers in his area have expressed concern over three areas: tree safety, poultry safety and consumer safety. Regarding tree safety, he explained that there is a concern over the Emerald Ash Borer infestation in Virginia and the fact that this insect pest

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was found in some of the traps in northern Virginia. He noted that consumers are worried that sufficient steps are not being taken to limit the infestation. Regarding poultry safety, he stated that there is concern over some news stories that outlined the use of an arsenic compound in a chicken feed additive and that what may be good for the health of chickens may be not so good for human health. On the consumer safety side, he noted that consumers are concerned about internet scams. He asked the Department to educate consumers in his district on how to avoid being "stung."

Mr. Hardesty welcomed Dr. Grant and thanked Mr. Ellis for his hospitality during the Board's summer meeting and tour. He reported that farmers in his district have had a good season. He stated that the corn crop is about 70 percent finished and that the average yield is 140 to 150 bushels an acre. He noted that the soybean crop is about 90 percent finished but that yield is down to 40 to 45 bushels per acre. He reported that the peach crop was average but that the price for peaches this year was really good. He stated that the apple crop and prices are down. He added that the apple crop yielded about 500 to 600 bushels per acre. He thanked Commissioner Haymore for his support of the local winery that opposed new requirements proposed by Clarke County. He reported that the local farmers market did well last summer. Mr. Hardesty mentioned he attended one of the area meetings held by the Virginia Agribusiness Council.

Mr. Ellis reported that his district has had an above average crop. He noted that farmers in his area are dealing with the crop damage problems caused by deer and geese. He mentioned that he attended a strategic planning session in his area relating to the work of Cooperative Extension. He added that he supports the Extension program.

President Rogers reported that 20 percent of the cotton in his area is still in the field and that 40 percent of the soybean crop has not been harvested. He observed that his area can have a pretty good crop year provided farmers can harvest what is left in the fields. He reported that a Wytheville woman approached him about the coyote problem she is having with her sheep. He praised the Department and staff for doing a great job despite the state budget situation. He asked that Dr. Mersie relay to Mr. Moore that the Board would like him to attend the May meeting, so that the Board can thank him for his commitment to the Board and to VSU. He reported that Mr. Bain and he also attended one of the planning sessions held by the Virginia Agribusiness Council. He indicated that the number of persons at the meeting that identified themselves as consumers greatly outnumbered those who represented agriculture interests.

COMMISSIONER'S REPORT

Commissioner Haymore briefed the Board on personnel changes, recent and future events and other matters relating to the Virginia Department of Agriculture and Consumer Services (VDACS) and to agriculture and consumer protection. A copy of a written report on which his presentation was based was included in the Board's meeting folders. During his comments he noted that Deputy Commissioner Don Blankenship was resigning his position with the agency and that the agency would be challenged to find a person to fill this very important position. The Commissioner also noted that Don had been a considerable help to him during his two and a half years as agency head.

(Following the Commissioner's Report, President Rogers called for a recess to prepare for a public hearing on a proposed permanent beach vitex quarantine, 2 VAC 5-316.)

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PUBLIC HEARING – BEACH VITEX QUARANTINE (2 VAC 5-316)

President Rogers called to order the public hearing on the proposal to establish a permanent beach vitex quarantine that would extend Commissioner Haymore's temporary quarantine. (A copy of the proposed was sent to the Board prior the hearing and a copy was included in the Board member folders.)

President Rogers called on Andy Alvarez, Director of the Division of Consumer Protection, who introduced Larry Nichols, Program Manager of the Office of Plant and Insect Services. Mr. Nichols briefed the Board concerning the need to establish a permanent beach vitex quarantine and reviewed what actions have been taken to address this plant species.

Mr. Rogers then recognized members of the public who spoke in support of the proposed permanent quarantine. These speakers included Lee Rosenberg of the City of Norfolk who is Virginia's Beach Vitex Task Force Coordinator, and David Phemister, Director of Government Relations for The Nature Conservancy in Virginia.

Following Board questions and additional staff comments, Mr. Rogers closed the public hearing and called the Board back into its regular business meeting. (A court reporter recorded the hearing and will prepare a transcript that will be shared with the Board and made a part of the official record of the December 3rd meeting.)

PROPOSED PERMANENT BEACH VITEX QUARANTINE (2 VAC 5-316)

Mr. Alvarez called on Mr. Nichols who reviewed the proposed regulation 2 VAC 5-316 that would establish a permanent beach vitex quarantine and offered the recommendation that the Board take action to adopt this proposal.

Following Board and staff comments, Mr. Ellis made the motion that the Board adopt the proposed regulation concerning the beach vitex quarantine, 2 VAC 5-316, presented by staff today and that the Board authorize staff to take any and all steps necessary to make this a final regulation of the Board. Mr. Clark seconded the motion and it was passed by a unanimous vote.

BOARD RESOLUTION HONORING DON BLANKENSHIP

President Rogers called to the Board members' attention a draft resolution honoring Deputy Commissioner Don Blankenship which had been distributed to the members. Mr. Sturgis made the motion that the Board adopt the draft resolution and have it presented to Mr. Blankenship as an expression of the Board's appreciation for his service to the Board. Mr. Toulme seconded this motion and it passed unanimously. President Rogers then read and presented the resolution to Mr. Blankenship. In response, Mr. Blankenship thanked the Board members for the resolution and for the opportunity to work with the Board.

PROCLAMATION HONORING DON BLANKENSHIP

President Rogers recognized Robert S. Bloxom, Secretary of Agriculture and Forestry, who came forward to present a special proclamation to Mr. Blankenship. After reading this proclamation, Secretary Bloxom presented this document to Mr. Blankenship in recognition of his outstanding contributions to the Secretariat of Agriculture and Forestry and VDACS that have greatly benefited Virginia agriculture and Virginia consumers. Mr. Blankenship thanked the Secretary for the proclamation.

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ENDANGERED AND THREATENED PLANT AND INSECT SPECIES PROGRAM

Mr. Alvarez introduced Keith Tignor of the Office of Plant and Insect Services who briefed the Board concerning state efforts to protect endangered and threatened plant and insect species through the program administered by VDACS. Mr. Tignor noted that Virginia law recognizes the rights of the landowner regarding the protection of plant and insect species.

THREATENED AND ENDANGERED SPECIES – PROPOSED REGULATION (2 VAC 5-320)

Mr. Alvarez called on Mr. Nichols who presented the Board with a draft proposed regulation 2 VAC 5-320 concerning certain threatened and endangered plant and insect species for the Board's consideration. Mr. Nichols recommended that the Board propose the draft regulation (which was sent to the Board members prior to the meeting and which was included in the meeting folders) and that the Board authorize staff to take any and all necessary steps to have the proposed regulation filed with the Registrar of Regulations and published in The Virginia Register of Regulations for public review and comments.

Following Mr. Nichols' presentation and Board comments, Mr. Ellis moved that the Board propose the draft Endangered and Threatened Plant and Insect Species Regulation, 2 VAC 5-320, presented by staff and authorize staff to take any and all actions necessary to have the regulation filed with the Virginia Registrar of Regulations and published in The Virginia Register of Regulations as a proposed regulation for public review and comment. Mr. Toulme seconded the motion, and it was passed by a unanimous vote.

CARBONATED & STILL WATER BOTTLING PLANTS/BEVERAGES (2 VAC 5-540)

Dr. Richard Wilkes, Director of the Division of Animal and Food Industry Services (DAFIS), introduced Ryan Davis, Program Manager for the Office of Dairy and Foods, who advised the Board that a Notice of Intended Regulatory Action for the regulation pertaining to Carbonated and Still Water Bottling Plants and Beverages, 2 VAC 5-540, had been filed with the approval of the Board and that the staff now recommends that a proposal to repeal this regulation be filed with the Registrar of Regulations and published for public comment in The Virginia Register of Regulations. He explained that changes to the Code of Virginia make this regulation no longer necessary.

Following the staff presentation and comments, Mr. Fleming moved that the Board propose the repeal of the regulation pertaining to Carbonated and Still Water Bottling Plants and Beverages, 2 VAC 5-540, as presented by staff and authorize staff to take any and all actions necessary to have the proposed repeal filed with the Virginia Registrar of Regulations and published in The Virginia Register of Regulations for public review and comment. Mr. Clark seconded the motion and it was carried by a unanimous vote.

BOARD RESOLUTION RECOGNIZING SECRETARY BLOXOM

President Rogers called to the Board members' attention to a draft resolution recognizing Secretary Bloxom which had been distributed to the members. Mr. Clark made the motion that the Board adopt the draft resolution and have it presented to the Secretary as an expression of the Board's appreciation for his service to the Commonwealth. Mr. Sturgis seconded this motion and it passed unanimously. President Rogers then read and presented the resolution to Secretary Bloxom who thanked the Board for this special recognition.

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VDACS BUDGET UPDATE

President Rogers called on Deputy Commissioner Blankenship who presented an update on budget reductions that have been made to the VDACS budget for the biennium ending June 30, 2010.

CONSUMER HOTLINE, CONSUMER PORTAL & CONSUMER COUNSELING

Mr. Alvarez briefed the Board on the state consumer hotline, the consumer portal, and consumer counseling. During his presentation, he introduced Tina Holt of the Office of Consumer Affairs.

FARM-TO-SCHOOL PROGRAM

Charles R. Green, Director of the Division of Marketing, presented a briefing on the Farm-to-School Program which promotes the use of Virginia food products in the state's school systems.

ANIMAL POUNDS AND SHELTERS CIVIL PENALTIES

Dr. Wilkes called on Dr. Dan Kovich of his staff who briefed the Board concerning a proposed consent agreement with Mecklenburg County which VDACS and the locality had drafted. It was noted that at a past meeting the Board had authorized the Office of Veterinary Services of DAFIS to assess civil penalties pursuant to Section 3.2-6546 of the Code of Virginia for violations. In the Board member folders was a copy of a letter Dr. Wilkes sent to Mecklenburg County that provided notice of violations and civil penalty assessments. It was noted that after that notice Dr. Wilkes and staff worked with local officials to negotiate the proposed consent agreement which was sent to the Board members before the December meeting and which was included in the meeting folders for the Board's review and approval.

Following the presentation and questions and comments from the Board, Mr. Clark moved that the Board approve the proposed consent agreement staff has presented concerning the handling of civil penalty assessments for violations of the Comprehensive Animal Care Laws and regulations regarding the maintenance of animal pound facilities in Mecklenburg County. Ms. Lohr seconded the motion and the Board voted unanimously to pass it.

In response to Mr. Bain's request for the status of the Sussex and Surry County consent agreements the Board approved at a previous meeting, Dr. Kovich advised that the two localities are in compliance with those agreements.

President Rogers commended Dr. Wilkes and his staff for their work with animal welfare matters. Mr. Sturgis stated that he felt VDACS was on target with its efforts and expressed appreciation that the agency was working with localities to address problem areas.

NEW BUSINESS

Mr. Sturgis reported that recent storms have produced losses for Virginia's shellfish industry. He reported that the Eastern Shore Ag Conference and Trade Show will be held on January 6-7, 2010.

Mr. Sturgis reported on farmer concerns about crop destruction caused by deer and suggested that the Board invite Robert Duncan, Executive Director of the Department of Game and Inland Fisheries (DGIF), or a member of his staff to a future meeting to present a report on what is being done to address the deer and other wildlife problems farmers are experiencing.

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Commissioner Haymore agreed to contact Mr. Duncan to follow-up on the Board's expressed interest in what is being done to address crop damages caused by deer and other wildlife.

Deputy Commissioner Blankenship advised the Board that several years ago the Board took action at a regular business meeting to voice its opposition to the establishment of a resident elk population in Virginia. He noted the Board President wrote the Executive Director of DGIF to communicate the Board's position.

Dr. Wilkes pointed out that the introduction of elk into the Commonwealth would lead to major animal health problems and economic losses for livestock producers and the state because elk provide a reservoir for tuberculosis and brucellosis and threaten Virginia's status as a TB and brucellosis free state. Commissioner Haymore mentioned that the Commissioner of Agriculture for Alaska has expressed concern about the public safety problems that elk create.

Following a discussion of the elk situation, Mr. Clark moved that the Board go on record in opposing efforts to facilitate the establishment of a resident elk population in Virginia based on its concerns for animal health and other costly impacts on Virginia's farming communities, and that a letter be sent to the Executive Director of DGIF to communicate the Board's opposition to efforts to restore or establish an elk herd in Virginia. Mr. Ellis seconded the motion and it was carried by a unanimous vote.

President Rogers urged Board members to complete and return the economic interest disclosure forms by December 15, 2009. He also reminded the Board that each will need to go on line and complete required training on conflict of interest and procurement laws.

After some discussion by the Board, Mr. Clark moved that the Board recommend to Governor-Elect McDonnell that Commissioner Haymore be considered for reappointment to his current position or appointment to any other position in state government in which he could serve the Commonwealth. Mr. Toulme seconded the motion and it was carried by a unanimous vote.

Commissioner Haymore thanked the Board for this support and told them that he had been invited to meet with the Transition Team the following week. Concerning Mr. Blankenship's departure as Deputy Commissioner, the Commissioner stated again that he would miss his contributions and guidance.

The Commissioner advised the Board members that Mr. Moore was scheduled to receive the "Excellence in Virginia Government" award from Virginia Commonwealth University's L. Douglas Wilder School of Government and Public Affairs for his years of outstanding public service including 17 years as President of Virginia State University. He added that Mr. Moore will be retiring from his leadership role at VSU in June 2010.

PLANS FOR FUTURE BOARD MEETINGS

The Board Secretary reported that meeting dates for 2010 will include March 25, May 20, and December 9. He stated that plans for the summer meeting and tour will be made in cooperation with the Board member who volunteers to host that meeting.

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PUBLIC COMMENT PERIOD

Pierce Gardner, who described himself as a small-scale farmer, expressed his concern that there are laws that prevent consumers from buying healthy food products from farmers with sustainable operations. He added that farmers need fewer regulations---not more restrictions.

ADJOURNMENT

The Board adjourned at 12:30 p.m.

Respectfully submitted,

Paul W. Rogers, Jr., Board President

Roy Seward, Board Secretary